

**Regional Water Quality Control Board
Central Valley Region
Board Meeting – 9/10/11 December 2009**

**Response to Written Comments for City of Fresno; Copper River Ranch, LLC;
Consolidated Land Company and Consolidated Industries, Inc.; and Fresno
Metropolitan Flood Control District; North Fresno Wastewater Reclamation Facility,
Fresno County
Tentative Waste Discharge Requirements/NPDES Permit Reopener and Revision**

At a public hearing scheduled for 9/10/11 December 2009, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) will consider reopening Order No. R5-2006-0090 (NPDES No. CA0085189) and adopting a revised Order No. R5-2006-0090 to include operational turbidity specifications consistent with the recycled water criteria in Title 22, California Code of Regulations (CCR) for both coagulated and uncoagulated wastewater. The proposed revised Order No. R5-2006-0090 also includes changes where necessary to support the proposed revisions to the turbidity limitations and to correct copy errors that were transmitted in Order No. R5-2006-0090 in 2006. This document contains responses to written comments received from interested parties regarding the proposed Order circulated on 5 October 2009. Written comments from interested parties were required by public notice to be submitted to the Central Valley Water Board by 5 p.m. on 5 November 2009 to receive full consideration. Written comments were received by the due date from:

1. California Sportfishing Protection Alliance (CSPA)
2. City of Fresno (City)

The written comments are summarized below, followed by Central Valley Water Board staff responses.

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (CSPA)

CSPA – COMMENT 1a: The proposed Order replaces Effluent Limitations for turbidity which were present in the existing order with operational specifications. Removing the effluent limitations is contrary to the antibacksliding requirements of the Clean Water Act and Federal Regulations, 40 CFR §122.44(l)(1).

RESPONSE: Turbidity requirements that ensure that a treatment system is functioning properly are not water quality-based effluent limitations. Moving the turbidity requirements from the "Effluent Limitations" section of a permit to the "Special Provisions" is a proper exercise of the Central Valley Water Board's discretion. (State Water Board Order WQ 2009-0012 (*City of Stockton*), p. 8.) The City of Stockton order thus rejected CSPA's contention that replacing turbidity effluent limitations with operational specifications constitutes backsliding.

CSPA – COMMENT 1b: The proposed Order moves effluent limitations for turbidity to the "Special Provisions" section of the Order in an attempt to avoid mandatory minimum penalties as required by California Water Code 13385.

RESPONSE: The details regarding how mandatory minimum penalties are to be implemented for permit requirements are an enforcement issue. Enforcement of permit requirements, through mandatory minimum penalties or otherwise, will be addressed if and when violations occur.

CSPA – COMMENT 2: The proposed Order fails to include an effluent limitation for turbidity despite reasonable potential to exceed water quality objectives, which is contrary to 40 CFR 122.44. The chemical constituents objective in the Water Quality Control Plan for the Sacramento and San Joaquin River Basins requires waters designated for use as domestic or municipal supply (MUN), at a minimum, shall not contain chemical constituent concentrations in excess of maximum contaminant levels (MCL) specified, in part, in Table 64449-A of Title 22, CCR. Table 64449-A includes a secondary MCL for turbidity of 5 NTU.

RESPONSE: There is no reasonable potential to exceed the secondary MCL for turbidity. This is a new facility, so there is no effluent turbidity data. However, the facility is designed to produce effluent turbidity much lower than the MCLs. Title 22, CCR, Section 64449 specifies that compliance with the secondary MCLs listed in Table 64449-A is to be determined by calculating the average of four consecutive quarterly samples. Although the compliance provisions of Section 64449 were not incorporated into the Basin Plan, the Central Valley Water Board has determined in previous NPDES permits that annual average limitations are appropriate for implementing secondary MCLs because average weekly and average monthly limitations would be unnecessarily stringent and are therefore impracticable. (40 CFR § 122.45(d).) The turbidity specifications in the proposed Order require that the effluent turbidity not exceed an average of 2 NTU within a 24-hour period when coagulation is used and not exceed 2 NTU at any time when coagulation is not used. As discussed above, the turbidity specifications are intended to ensure the tertiary treatment system operates as designed. Thus, by design, the facility's effluent turbidity will not exceed 2 NTU on a 24-hour average and will not cause or contribute to any exceedance of the secondary MCL of 5 NTU, whether on a weekly, monthly or annual average basis.

CITY OF FRESNO (CITY)

The City of Fresno submitted an email on 5 November 2009 stating that it has reviewed the proposed revised Order and has no comment.